

September 8, 1977

78-82 MEMORANDUM OPINION FOR THE COUNSEL TO THE PRESIDENT

National Commission on Neighborhoods (Pub. L. 95-24)—Powers—Appropriations

This is in response to your request for our opinion on a proposed interagency agreement between the Department of Housing and Urban Development (HUD) and the newly established National Commission on Neighborhoods (the Commission). The Commission was created by Title II of the Supplemental Housing Authorization Act of 1977.¹ This Act, *inter alia*, authorized additional funds to HUD for housing assistance for lower income Americans. However, in establishing the Commission the Act also appropriated funds to HUD not to exceed \$1,000,000 to carry out the congressional purpose in creating the Commission.² Thus, when the Commission can legally function HUD will be obliged to transfer the appropriated funds from its account to the Commission.

The Commission is to consist of 20 members.³ As matters now stand, it appears that no members of the Commission have been appointed; however, apparently some of the Commission's staff have been selected.⁴ So that the Commission's existing staff may obtain startup expense, HUD has agreed to transfer such funds upon the signing of an agreement between the two agencies. You ask whether such an agreement can be executed before the full membership of the Commission is appointed. In our opinion, no such agreement can be executed at this time.

The most obvious barrier is the absence of a party who can legally enter into the agreement with HUD on behalf of the Commission. It is clear from the Act that only the Commission may execute such an agreement or designate an

¹Section 203(a) of Pub. L. 95-24, 91 Stat. 56.

²Section 207, *id.*

³Section 203(b), *id.*

⁴It is difficult to see how the Commission can have any staff at this juncture since no members have been appointed and the Act gives the Commission sole power to appoint and fix the compensation of its staff.

individual to act upon its behalf.⁵ Nor can the agreement be executed until all the members of the Commission are appointed. Except for the limited authority given to the Chairman or Vice Chairman by § 206(c) of the Act, all powers and duties are vested in the Commission.⁶ Thus, until all the Commission's members are appointed, HUD and the Commission cannot execute a legal agreement.

However, at such time as the Commission is a functioning body, we see no need for the agreement. The Commission is authorized by the Act to receive funds so long as they do not exceed \$1,000,000. All that would be necessary would be a general transfer of funds from HUD to the Commission.

LEON ULMAN
Deputy Assistant Attorney General
Office of Legal Counsel

⁵In the main, the Act is silent as to the Commission's internal organization, practices, and procedures. The clear implication is that these matters are to be decided by the members of the Commission.

⁶See §§ 204 and 206, *id.*